

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

* * * * * 19CR10131-NMG
UNITED STATES OF AMERICA *
VS. * JUNE 21, 2109
* 11:00 A.M.
*
TOBY MacFARLANE *
* * * * * BOSTON, MA

BEFORE THE HONORABLE NATHANIEL M. GORTON
DISTRICT JUDGE
(Rule 11 Hearing)

APPEARANCES:

FOR THE GOVERNMENT: KRISTEN A. KEARNEY, AUSA
ERIC S. ROSEN, AUSA
United States Attorney's Office
1 Courthouse Way
Suite 9200
Boston, MA 02210

FOR THE DEFENDANT: TED W. CASSMAN, ESQ.
Arguedas, Cassman Headley &
Goldman LLP
803 Hearst Avenue
Berkeley, CA 94710

Court Reporter: Debra D. Lajoie, RPR-FCRR-CRI-RMR
1 Courthouse Way
Boston, MA 02210

Proceeding reported and produced
by computer-aided stenography

1 21 JUNE 2019 -- 11:00 A.M.

2 THE CLERK: This is Criminal Action
3 No. 19-10131, the United States of America v.
4 Toby MacFarlane.

5 Will counsel please identify themselves for the
6 record.

7 MS. KEARNEY: Good morning, Your Honor.
8 Kristen Kearney and Eric Rosen for the
9 United States.

10 THE COURT: Ms. Kearney, Mr. Rosen, good
11 morning.

12 MR. CASSMAN: Good morning, Your Honor.
13 Ted Cassman on behalf of Mr. MacFarlane who's present
14 out of custody.

15 THE COURT: Mr. Cassman, Mr. MacFarlane, good
16 morning.

17 THE DEFENDANT: Good morning.

18 THE COURT: I understand, Mr. Cassman, your
19 client is here to plead to an information; is that
20 correct?

21 MR. CASSMAN: That's correct.

22 THE COURT: Then, if he would take the witness
23 stand, you may join him if you wish.

24 MR. CASSMAN: I'd like to do that.

25 (The Defendant Was Sworn)

1 THE CLERK: Thank you. You may be seated.

2 THE COURT: Good morning again, Mr. MacFarlane.

3 Do you understand that you have a Constitutional
4 right to be charged by an indictment of a Grand Jury,
5 but you can waive that right and consent to be charged
6 by an information of the US Attorney? Do you
7 understand that?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: Now, instead of by indictment, these
10 felony charges against you have been brought by the
11 United States Attorney by the filing of an information.
12 Unless you waive indictment, you may not be charged
13 with a felony unless a Grand Jury finds by return of an
14 indictment that there is probable cause to believe that
15 a crime has been committed and that you have committed
16 it. If you do not waive the indictment, the Government
17 may present the case to the Grand Jury and request it
18 to indict you; do you understand that?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: Now, a Grand Jury is composed of at
21 least 16 but not more than 23 persons. At least 12 of
22 those Grand Jurors must find that there is probable
23 cause to believe that you committed the crime with
24 which you are charged before you can be indicted, and a
25 Grand Jury might or might not indict you; do you

1 understand that?

2 THE DEFENDANT: I do.

3 THE COURT: If you waive indictment by the
4 Grand Jury, the case will proceed against you on the
5 United States Attorney's information just as though you
6 had been indicted; do you understand that?

7 THE DEFENDANT: I do.

8 THE COURT: Have you discussed the matter of
9 waiving your right to indictment by the Grand Jury with
10 your counsel?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you also understand that you
13 have a right to such a Grand Jury hearing?

14 THE DEFENDANT: Yes.

15 THE COURT: Have any threats or promises been
16 made to induce to you waive that right?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: And do you now, in open court, wish
19 to waive your right to indictment by a Grand Jury?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And Mr. Cassman, do you see any
22 reason why your client ought not do so?

23 MR. CASSMAN: No, Your Honor. And we do have a
24 signed waiver.

25 THE COURT: All right. That's fine. You

1 anticipated my next question. Would you please give
2 that to my Deputy.

3 So it is the Court's finding that the
4 Defendant's waiver of indictment is made knowingly and
5 voluntarily, and his waiver of indictment is,
6 therefore, accepted by the Court.

7 Now, Mr. MacFarlane, do you understand that you
8 are now under oath and that, if you answer any of my
9 questions falsely, those answers may later be used
10 against you in a prosecution for perjury or making a
11 false statement? Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Would you please state your full
14 name for the record.

15 THE DEFENDANT: Toby Taylor McFarlane.

16 THE COURT: And how old are you, Mr. MacFarlane?

17 THE DEFENDANT: 56.

18 THE COURT: And what is your educational
19 background?

20 THE DEFENDANT: I have a college degree.

21 THE COURT: From what institution?

22 THE DEFENDANT: USC.

23 THE COURT: All right. Are you presently under
24 the influence -- well, let me ask first, have you ever
25 been treated for any mental illness or addiction to

1 narcotic drugs?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Are you presently under the
4 influence of any drug, medication or alcoholic beverage
5 of any kind?

6 THE DEFENDANT: No.

7 THE COURT: Have you received a copy of the
8 information pending against you in this case; that is,
9 the written charges made against you, and have you
10 discussed those charges and the case in general with
11 your attorney, Mr. Cassman?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And in your own words,
14 Mr. McFarlane, what do you understand you're being
15 charged with here this morning?

16 THE DEFENDANT: I am charged with a conspiracy
17 to commit fraud by getting my children admitted USC as
18 recruited athletes when in fact they're not.

19 THE COURT: All right. Are you fully satisfied
20 with the counsel, representation and advice given to
21 you by Mr. Cassman and your other counsel in this case?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. Now, there is a written
24 plea agreement between you and the Government. I would
25 ask Ms. Kearney to outline the provisions of that

1 agreement for you and for the Court.

2 MS. KEARNEY: Yes, Your Honor.

3 Under the terms of the plea agreement, the
4 Defendant has agreed to plead guilty to one count of
5 conspiracy to commit mail fraud and honest services
6 mail fraud.

7 The parties have agreed to a sentencing
8 guideline of 16, which is based on a base offense level
9 of 7, an increase of 12 because the gain or loss from
10 the offense of commission is more than 250,000 but not
11 more than 550,000 and that the Defendant's offense
12 level is increased by three because he has accepted
13 responsibility for his crime, which results in an
14 expected guideline range of 21 to 27 months.

15 The Government has agreed to recommend a term of
16 imprisonment of 15 months, a fine of \$95,000, 12 months
17 of supervised release, a \$100 special assessment,
18 restitution and forfeiture.

19 In addition, the Government is requiring the
20 Defendant to agree to cooperate with the Examination
21 and Collection Division of the IRS and to pay all
22 delinquent and additional taxes, interest and penalties
23 that may be owed.

24 The Defendant has waived his right to challenge
25 his conviction as well as the right to challenge his

1 sentence, with the exception of claims based on
2 ineffective assistance of counsel or prosecutorial
3 misconduct.

4 And that generally summarizes the plea
5 agreement.

6 THE COURT: All right. Mr. MacFarlane, are
7 those the terms of your agreement with the Government,
8 as you understand them?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Has anyone made any other or
11 different promise or assurance to you of any kind in an
12 effort to make you plead guilty in this case?

13 THE DEFENDANT: No.

14 THE COURT: You understand that the Court does
15 not have to follow the Government's recommendation or
16 your unopposed request, and if it does not, you
17 nevertheless will still be bound by your plea of guilty
18 and will have no right to withdraw it? Do you
19 understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has anyone attempted to force you to
22 plead guilty here this morning?

23 THE DEFENDANT: No.

24 THE COURT: Do you understand that the offense
25 to which you are pleading guilty is a felony and that,

1 if your plea is accepted, you'll be judged guilty of
2 that offense and that such adjudication may deprive you
3 of valuable civil rights such as the right to vote, the
4 right to hold public office, the right to serve on a
5 jury, the right to possess any kind of firearm? Do you
6 understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Then, Ms. Kearney, will
9 you remind the Defendant and the Court of the maximum
10 possible penalties that he faces with these charges and
11 if there are any mandatory minimums.

12 MS. KEARNEY: There are no mandatory minimums.
13 The maximum penalty is 20 years' incarceration; three
14 years of supervised release; a \$250,000 fine, or twice
15 the gross gain or loss, whichever is more; a \$100
16 special assessment; restitution; and forfeiture.

17 THE COURT: All right. Mr. MacFarlane, do you
18 understand the possible consequences of your plea here
19 this morning?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Now, under the Sentencing Reform Act
22 of 1984, the United States Sentencing Commission issued
23 guidelines for judges to follow when imposing sentences
24 in criminal cases. Have you and your counsel discussed
25 how those guidelines may apply in your specific case?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And do you understand that a
3 decision of the United States Supreme Court some
4 14 years ago rendered the sentencing guidelines
5 advisory rather than mandatory, meaning that I have the
6 discretion to sentence you anywhere in the range set
7 forth in the statute governing the crime to which you
8 plead guilty and that I am not required to sentence you
9 in accordance with the guidelines or even based upon
10 the factors contained in those guidelines? Do you
11 understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And do you also understand that the
14 Court will not be able to determine even what advisory
15 guideline applies in your case until after a
16 presentence report has been prepared for me by the
17 Probation Department and both you and the Government
18 have had a chance to challenge the facts that are set
19 forth in that report? Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And do you also understand that,
22 after it has been determined what the advisory
23 guideline is, the Judge, in this case, that means me,
24 has the authority in some circumstances to impose a
25 sentence that is more severe or less severe than those

1 called for in the guidelines? Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you further understand that,
4 under some circumstances, you would have had a right to
5 appeal your sentence to a higher Court, but you've
6 agreed in writing in this plea agreement that you have
7 waived your right to appeal, so that any sentence that
8 is imposed against you is going to be non-appealable,
9 with those exceptions that the Assistant United States
10 Attorney pointed out, that you always retain your right
11 to later claim that your lawyer rendered ineffective
12 assistance of counsel or that the prosecutor engaged in
13 misconduct?

14 Do you understand all of that?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. And do you understand that
17 parole has been abolished, and if you are sentenced to
18 be imprisoned, you will not be released on parole? Do
19 you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Then, Mr. MacFarlane, do
22 you understand generally that you have a right to plead
23 not guilty to any charge against you and to persist in
24 that plea and that you would then have the right to a
25 trial by jury during which you'd have the right to be

1 represented by a lawyer in your defense, you'd have the
2 right to see and hear all of the witnesses and have
3 them cross-examined in your defense, you'd have the
4 right on your own part to decline to testify unless you
5 voluntarily agree to do so, and you'd have the right to
6 the issuance of subpoenas, or compulsory process, to
7 compel the attendance of witnesses to testify in your
8 defense? Do you understand all of that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And do you further understand that,
11 by entering a plea of guilty, if that plea is accepted
12 by this Court, there will be no trial and you will have
13 waived or given up your right to a trial by jury as
14 well as those other rights associated with such a trial
15 that I just described? Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Then, Ms. Kearney, will
18 you please inform the Defendant of exactly what facts
19 the Government would prove if this matter were to go to
20 trial.

21 MS. KEARNEY: Yes, Your Honor.

22 If this case were to proceed to trial, the
23 evidence would show, through recorded telephone calls,
24 documents, emails and witness testimony, that USC is a
25 highly selective private university located in

1 Los Angeles. The athletic teams of USC compete in most
2 sports at the Division I level, the highest level of
3 intercollegiate athletics sanctioned by the National
4 Collegiate Athletic Association, or NCAA. USC recruits
5 students with demonstrated athletic abilities and
6 typically applies different criteria when evaluating
7 applications from such students with the expectation
8 that recruited athletes will be contributing members of
9 USC's athletic teams, once enrolled.

10 Typically, the Admissions Office at USC allots a
11 set number of admission slots to each head coach of a
12 varsity sport for that coach's recruited athletes. At
13 USC, students recruited for those athletic slots have
14 substantially higher admissions prospects than
15 non-recruited students with similar grades and
16 standardized test scores. Admission slots, the
17 determination of which students to admit and the
18 resulting composition of undergraduate classes, are
19 important assets of USC.

20 Until November 8th of 2013, Ali Khosroshahin
21 was the head coach of women's soccer at USC. Until
22 January 10th of 2014, Laura Janke was the assistant
23 coach of women's soccer at USC. As such, Khosroshahin
24 and Janke's jobs were to recruit legitimate student
25 athletes who could contribute to the USC women's soccer

1 team. Instead of doing their job, Khosroshahin and
2 Janke accepted money for themselves and for private
3 soccer camps that they ran and whose accounts they
4 controlled to designate students who were not
5 legitimate student athletes as recruited women soccer
6 players, thereby effectively ensuring their admission
7 to USC through the athletic admissions process. In
8 addition, Janke, with the help of others, including
9 Rick Singer, also created and edited fake athletic
10 profiles to make it appear that the children of
11 Singer's clients were true athletes when they were not.

12 At all relevant times to this case, Donna Heinel
13 was the Senior Athletics Administrator at USC. Heinel
14 was the admissions liaison between the USC athletic
15 coaches and the University Admissions Office. Heinel's
16 job was to guide legitimate student athletes through
17 the University admissions process. To that end,
18 coaches would provide Heinel with lists of their
19 recruited athletes, and Heinel would bring the athletic
20 profiles and admissions packets of the athletes to the
21 University Athletics Admissions Committee where she
22 would then present them for review by the Committee.

23 Heinel is not a coach and had no power to
24 recruit athletes. Heinel was simply supposed to act as
25 a liaison, a point person between the coaches and the

1 University Admissions. Instead of doing her job,
2 Heinel accepted money for both herself and the
3 University accounts that she controlled to her benefit
4 to designate non-recruited athletes as recruited
5 athletes, thereby effectively ensuring their admission
6 to USC through the athlete admissions process.

7 Heinel, with the help of others, including
8 Rick Singer and Heinel's assistants within the
9 athletics office, created and edited fake athletic
10 profiles, making it appear that the children of
11 Singer's clients as well as others were true athletes.
12 They were not. Then the athletic profiles would be
13 mixed in with legitimate athletes, again, making it
14 appear that those fake athletes had been recruited by
15 USC coaches when they had not.

16 The Defendant, Toby MacFarlane, conspired with
17 Singer, who has pleaded guilty to an information before
18 Judge Zobel, and others to commit mail fraud and honest
19 services mail fraud through his participation in a
20 scheme to use bribery and other forms of fraud to
21 facilitate the admission of the Defendant's children to
22 USC .

23 Defendant's participation in the scheme for
24 which he paid a total of \$450,000 to facilitate the
25 admission of his children to USC as purported athletic

1 recruits was as follows: In or around October of 2013,
2 the Defendant agreed to pay Singer to arrange for his
3 daughter to be presented to USC as a recruited soccer
4 player, thereby facilitating her admission to USC. As
5 part of the scheme, Singer created a fake athletic
6 profile for Defendant's daughter, and Defendant's
7 daughter's athletic accomplishments were falsified on
8 her USC application.

9 On or about November 4th of 2013, Khosroshahin
10 and Janke caused Defendant's daughter to be presented
11 to the USC Athletic Admissions Committee as a recruited
12 soccer player. Defendant's daughter was subsequently
13 admitted to USC through the athletic admissions
14 process, and USC mailed a formal acceptance letter on
15 or about March 26th of 2014.

16 On or about April 15th of 2014, Singer caused
17 his bookkeeper to email the Defendant regarding payment
18 for his daughter's fraudulent recruitment to USC. The
19 subject line of his email was, "Placement fees, 200K."

20 Two days later, the Defendant emailed Singer
21 with the subject, "Real estate consulting invoice."
22 Singer forwarded this email to his bookkeeper with the
23 message, "FYI: See title of invoice."

24 On or about May 2nd of 2014, the Defendant
25 issued a \$200,000 check to Singer's for-profit entity

1 The Key with "Real estate consulting and analysis"
2 written in the memo line. Neither Singer nor The Key
3 ever provided Defendant with real estate consulting
4 services. Rather, Defendant understood that the
5 \$200,000 payment to The Key was for his daughter to be
6 falsely and fraudulently designated as a recruit to the
7 USC women's soccer team, thereby facilitating her
8 admission to USC. Following receipt of Defendant's
9 \$200,000 payment, Singer caused The Key to issue a
10 \$100,000 payment to a private soccer club controlled by
11 Khosroshahin and Janke.

12 In or around August of 2014, Defendant exchanged
13 emails with Singer in which they discussed a fake
14 injury Defendant should claim his daughter incurred so
15 that she would not be expected to play soccer by USC's
16 new soccer coaches who had since replaced Khosroshahin
17 and Janke.

18 In or around November of 2016, Defendant agreed
19 to pay Singer to arrange for his son to be presented to
20 USC as a recruited basketball player, thereby
21 facilitating his admission to USC. In connection with
22 this scheme, Singer directed Janke to create a fake
23 athletic profile for the Defendant's son, which Singer
24 emailed to Heinel. On or about January 26th of 2017,
25 Heinel presented Defendant's son to the USC Athletics

1 Admissions Committee as a purported basketball recruit.

2 On or about February of 2017, USC issued a
3 letter to Defendant's son notifying him of his
4 conditional admission to USC as a student athlete. USC
5 mailed a formal acceptance letter to the Defendant's
6 son on or about March 23rd, 2017. Days after his son's
7 conditional acceptance to USC, the Defendant made a
8 payment of \$50,000 to USC Women's Athletic Program
9 account controlled by Heinel. Following his son's
10 formal acceptance to USC, the Defendant made a \$200,000
11 payment to Singer. In the memo line of the \$200,000
12 check, Defendant wrote, "Real estate consulting."

13 Neither Singer nor any of the entities he
14 controlled provided any real estate consulting services
15 for Defendant. Rather, the Defendant understood that,
16 in exchange for these payments, his son would be
17 falsely and fraudulently designated as a recruit to the
18 USC's men's basketball team, thereby facilitating his
19 admission to USC.

20 THE COURT: Mr. MacFarlane, do you have anything
21 to add to what Ms. Kearney says the Government would be
22 able to prove if this matter were to go to trial?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Do you disagree with anything that
25 she says the Government would be able to prove?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: That being so, I would ask my Deputy
3 to inquire of the Defendant as to how he now wishes to
4 plead. And Mr. MacFarlane, will you please stand.

5 THE CLERK: Mr. MacFarlane, Count I of the
6 single-count information charges you with conspiracy to
7 commit mail fraud and honest services mail fraud, in
8 violation of Title 18 of the United States Code,
9 Section 1349.

10 How do you wish to plead to Count I, guilty or
11 not guilty?

12 THE DEFENDANT: Guilty.

13 THE CLERK: Thank you. You may be seated.

14 THE COURT: That being so, it is the finding
15 of the Court, in the case of the United States v.
16 Toby MacFarlane, that the Defendant is fully competent
17 and capable of entering an informed plea and that his
18 plea of guilty is a knowing and voluntary plea
19 supported by an independent basis in fact containing
20 each of the essential elements of the offense charged.

21 His plea is, therefore, accepted, and he is now
22 judged guilty of that offense.

23 Mr. MacFarlane, a written presentence report
24 will be prepared for me by the Probation Department.
25 You will be asked to give information for that report.

1 Your attorney may be present if you wish. Both you and
2 your attorney will be given the opportunity to read
3 that presentence report before the sentencing hearing,
4 and at the sentencing hearing itself, not only your
5 lawyer, but you will be afforded the opportunity to
6 speak; do you understand all of that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Then, the sentencing
9 will be scheduled for Tuesday, October 1st, 2019, at
10 3:00 p.m. Any known --

11 MR. CASSMAN: Your Honor, may I request a date
12 in November? I was going to request the week of
13 November 11th, if that's convenient for the Court.

14 THE COURT: Any objection from the Government's
15 side?

16 MS. KEARNEY: No objection, Your Honor.

17 THE CLERK: We could do it on Wednesday, the
18 13th, at 3:00 p.m.

19 THE COURT: In November?

20 THE CLERK: That's November, yeah.

21 THE COURT: Wednesday, November 13th, at
22 3:00 p.m. Any conflicts with that date, Mr. Cassman?

23 MR. CASSMAN: No, Your Honor.

24 THE COURT: Or Ms. Kearney?

25 MS. KEARNEY: No, Your Honor.

1 THE COURT: So it'll be Wednesday,
2 November 13th, at 3:00 p.m.

3 Now, failure to appear at that scheduled time,
4 Mr. MacFarlane, is a criminal offense for which you
5 could be sentenced to prison. There are certain
6 conditions upon which you are under release, and I will
7 repeat them for the record.

8 You are released on your own personal
9 recognizance, but you are to report to the
10 United States Probation and Pretrial Services as
11 directed. You are to surrender your passport and not
12 obtain any future travel documents. Your travel is
13 restricted to the United States. You are to avoid all
14 contact with any victim or potential witness in this
15 case, including co-Defendants. This excludes family
16 members.

17 You are to refrain from any possession of a
18 firearm, destructive device or other dangerous weapon,
19 report any contact with law enforcement within 24 hours
20 and maintain your residence and not move without the
21 prior permission of the United States Probation Office.

22 Do you understand all of those conditions?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Penalties for violations of those
25 convictions can be severe; do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Is there anything else, then, that
3 needs to come to the Court's attention before we
4 adjourn?

5 MS. KEARNEY: Nothing, Your Honor.

6 MR. CASSMAN: No, Your Honor.

7 THE COURT: Then, we are adjourned. Thank you.
8 (Adjourned, 11:22 a.m.)

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C E R T I F I C A T I O N

I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do
hereby certify that the foregoing pages are a true and
accurate transcription of my stenographic notes in the
above-entitled case.

/s/ Debra D. Lajoie

6/24/19